

**We received the following question regarding SP4410-98-R-1002 and have included the response thereto. This does not delay the closing date for this solicitation:**

**QUESTION:** In accepting hazardous property or waste at a DRMO, does the ownership of the waste stay with the generator or does the DRMO accept ownership? I realize that the DRMO's responsibility is to package and prepare the waste for shipment off base, however by doing so, does the contractor accept ownership of or liability for the waste?

**RESPONSE:** Contractors who are in the hazardous waste business can be held liable for certain actions they take in performing the contract. RCRA is a regulatory statute. If they violate RCRA, they are subject to fines and penalties. This has nothing to do with ownership of the waste. If they are negligent in handling the hazardous waste and a third party is damaged, they can be held liable for the injury. This also has nothing to do with ownership. It has to do with the duty to exercise care in handling hazardous waste. Finally, a contractor can be liable for costs of a cleanup if there is a release of hazardous substances and the contractor is in one of the categories of persons who can be held liable under CERCLA. They may be liable as an owner or operator of a facility, as a transporter or as an arranger for disposal of hazardous substances they possess. For the most part, these statutory categories do not involve ownership of the substances and wastes. There are limits on a federal agency offering indemnification to contractors.

The generator is responsible for hazardous waste from cradle to grave. Any responsibility for the waste, should there be any problem, RCRA, CERCLA, TSCA, DOT is ultimately born by the owner of the EPA ID number the waste was generated or manifested under for disposal (usually the installation commander). DRMS as the operator of facilities and as the hazardous waste disposal agent for DoD accepts accountability and legal responsibility for HW processed through our system (If anything goes wrong for wastes DRMS' processes we fix). DRMS, by virtue of being in the business of representing the US Government, is seen as the "generator" for DoD by DoD activities so when something does go wrong, we usually get the call. In comparison to the amount of HW we process, the regulatory problems we have are relatively few. Contractor liability/responsibility is a legal matter between DRMS and the contractor. Through our contracts our contractors may be required to indemnify us against claims, and would, under the terms of the contract assume responsibility for improper or illegal acts. Therefor, the contractors must review the terms of the contract, of the individual task order, and understand their responsibility under the various environmental laws, regulations, etc., if a task order is issued requiring the handling of hazardous property/waste. There may not ever be a task order involving hazardous property or hazardous waste.